

REFERENCE TITLE: **land valuation fund**

State of Arizona  
Senate  
Forty-seventh Legislature  
Second Regular Session  
2006

# **SB 1026**

Introduced by  
Senator Harper

**AN ACT**

**AMENDING SECTIONS 13-2314 AND 41-1512, ARIZONA REVISED STATUTES; MAKING AN APPROPRIATION; RELATING TO THE MILITARY AFFAIRS COMMISSION.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-2314, Arizona Revised Statutes, is amended to read:

13-2314. Racketeering: civil remedies by this state: definitions

A. The attorney general or a county attorney may file an action in superior court on behalf of a person who sustains injury to his person, business or property by racketeering as defined by section 13-2301, subsection D, paragraph 4 or by a violation of section 13-2312 OR SECTION 41-1512, SUBSECTION J, PARAGRAPH 2 for the recovery of treble damages and the costs of the suit, including reasonable attorney fees, or to prevent, restrain, or remedy racketeering as defined by section 13-2301, subsection D, paragraph 4 or a violation of section 13-2312 OR SECTION 41-1512, SUBSECTION J, PARAGRAPH 2. If the person against whom a racketeering claim has been asserted, including a forfeiture action or lien, prevails on that claim, the person may be awarded costs and reasonable attorney fees incurred in defense of that claim. In actions filed by the state or a county, awards of costs and reasonable attorney fees are to be assessed against and paid from monies acquired pursuant to sections 13-2314.01 and 13-2314.03.

B. The superior court has jurisdiction to prevent, restrain, and remedy racketeering as defined by section 13-2301, subsection D, paragraph 4 or a violation of section 13-2312 OR SECTION 41-1512, SUBSECTION J, PARAGRAPH 2 after making provision for the rights of any person who sustained injury to his person, business or property by the racketeering conduct and after a hearing or trial, as appropriate, by issuing appropriate orders.

C. Prior to a determination of liability such orders may include, but are not limited to, issuing seizure warrants, entering findings of probable cause for in personam or in rem forfeiture, entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, the creation of receiverships and the enforcement of constructive trusts, in connection with any property or other interest subject to forfeiture, damages or other remedies or restraints pursuant to this section as the court deems proper.

D. Following a determination of liability such orders may include, but are not limited to:

1. Ordering any person to divest himself of any interest, direct or indirect, in any enterprise.

2. Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws of this state, to the extent the constitutions of the United States and this state permit.

3. Ordering dissolution or reorganization of any enterprise.

1           4. Ordering the payment of treble damages to those persons injured by  
2 racketeering as defined by section 13-2301, subsection D, paragraph 4 or a  
3 violation of section 13-2312 OR SECTION 41-1512, SUBSECTION J, PARAGRAPH 2.

4           5. Ordering the payment of all costs and expenses of the prosecution  
5 and investigation of any offense included in the definition of racketeering  
6 in section 13-2301, subsection D, paragraph 4 or a violation of section  
7 13-2312 OR SECTION 41-1512, SUBSECTION J, PARAGRAPH 2, civil and criminal,  
8 including reasonable attorney fees, to be paid to the general fund of the  
9 state or the county which brings the action.

10          6. In personam forfeiture pursuant to chapter 39 of this title to the  
11 general fund of the state or county as appropriate, to the extent that  
12 forfeiture is not inconsistent with protecting the rights of any person who  
13 sustained injury to his person, business or property by the racketeering  
14 conduct, of the interest of a person in:

15           (a) Any property or interest in property acquired or maintained by the  
16 person in violation of section 13-2312 OR SECTION 41-1512, SUBSECTION J,  
17 PARAGRAPH 2.

18           (b) Any interest in, security of, claims against or property, office,  
19 title, license or contractual right of any kind affording a source of  
20 influence over any enterprise or other property which the person has acquired  
21 or maintained an interest in or control of, conducted or participated in the  
22 conduct of in violation of section 13-2312 OR SECTION 41-1512, SUBSECTION J,  
23 PARAGRAPH 2.

24           (c) All proceeds traceable to an offense included in the definition of  
25 racketeering in section 13-2301, subsection D, paragraph 4 and held by the  
26 person and all monies, negotiable instruments, securities and other property  
27 used or intended to be used by the person in any manner or part to facilitate  
28 commission of the offense and that the person either owned or controlled for  
29 the purpose of that use.

30           (d) Any other property up to the value of the subject property  
31 described in subdivision (a), (b) or (c) of this paragraph.

32          7. Payment to the general fund of the state or county as appropriate  
33 of an amount equal to the gain that was acquired or maintained through an  
34 offense included in the definition of racketeering in section 13-2301,  
35 subsection D, paragraph 4 or a violation of section 13-2312 OR SECTION  
36 41-1512, SUBSECTION J, PARAGRAPH 2 or that any person is liable for under  
37 this section.

38          E. A person who is liable for conduct described in subsection D,  
39 paragraph 6, subdivision (a), (b) or (c) of this section is liable for the  
40 total value of all interests in property described in those  
41 subdivisions. The court shall enter an order of forfeiture against the  
42 person in the amount of the total value of all those interests less the value  
43 of any interests that are forfeited before or at the time of the entry of the  
44 final judgment.

1 F. A person or enterprise that acquires any property through an  
2 offense included in the definition of racketeering in section 13-2301,  
3 subsection D, paragraph 4 or through a violation of section 13-2312 OR  
4 SECTION 41-1512, SUBSECTION J, PARAGRAPH 2 is an involuntary trustee. The  
5 involuntary trustee and any other person or enterprise, except a bona fide  
6 purchaser for value who is reasonably without notice of the unlawful conduct  
7 and who is not knowingly taking part in an illegal transaction, hold the  
8 property, its proceeds and its fruits in constructive trust for the benefit  
9 of persons entitled to remedies under this section.

10 G. In addition to or in lieu of an action under this section the  
11 attorney general or a county attorney may file an in rem action pursuant to  
12 chapter 39 of this title for forfeiture, to the extent that forfeiture is not  
13 inconsistent with protecting the rights of any person who sustained injury to  
14 his person, business or property by the racketeering conduct, of:

15 1. Any property or interest in property acquired or maintained by a  
16 person in violation of section 13-2312 OR SECTION 41-1512, SUBSECTION J,  
17 PARAGRAPH 2.

18 2. Any interest in, security of, claims against or property, office,  
19 title, license or contractual right of any kind affording a source of  
20 influence over any enterprise or other property which a person has acquired  
21 or maintained an interest in or control of, conducted or participated in the  
22 conduct of in violation of section 13-2312 OR SECTION 41-1512, SUBSECTION J,  
23 PARAGRAPH 2.

24 3. All proceeds traceable to an offense included in the definition of  
25 racketeering in section 13-2301, subsection D, paragraph 4 and all monies,  
26 negotiable instruments, securities and other property used or intended to be  
27 used in any manner or part to facilitate the commission of the offense.

28 H. A defendant convicted in any criminal proceeding shall be precluded  
29 from subsequently denying the essential allegations of the criminal offense  
30 of which he was convicted in any civil proceeding. For the purposes of this  
31 subsection, a conviction may result from a verdict or plea including a no  
32 contest plea.

33 I. Notwithstanding any law creating a lesser period, the initiation of  
34 civil proceedings related to violations of any offense included in the  
35 definition of racketeering in section 13-2301, subsection D, paragraph 4 or a  
36 violation of section 13-2312 OR SECTION 41-1512, SUBSECTION J, PARAGRAPH 2,  
37 including procedures pursuant to chapter 39 of this title, shall be commenced  
38 within seven years after actual discovery of the violation.

39 J. In any civil action brought pursuant to this section, the attorney  
40 general or a county attorney may file with the clerk of the superior court a  
41 certificate stating that the case is of special public importance. A copy of  
42 that certificate shall be furnished immediately by such clerk to the chief  
43 judge or presiding chief judge of the superior court in the county in which  
44 such action is pending, and, upon receipt of such copy, the judge shall  
45 immediately designate a judge to hear and determine the action. The judge so

1 designated shall promptly assign such action for hearing, participate in the  
2 hearings and determination and cause the action to be expedited.

3 K. The standard of proof in actions brought pursuant to this section  
4 is the preponderance of the evidence test.

5 L. A civil action authorized by this section, including proceedings  
6 pursuant to chapter 39 of this title, is remedial and not punitive and does  
7 not limit and is not limited by any other previous or subsequent civil or  
8 criminal action under this title or any other provision of law. Civil  
9 remedies provided under this title are supplemental and not mutually  
10 exclusive.

11 M. The attorney general may appear as amicus curiae in any proceeding  
12 in which a claim under this section has been asserted, including proceedings  
13 pursuant to chapter 39 of this title, or in which the court is interpreting  
14 this chapter or chapter 39 of this title. A party who files a notice of  
15 appeal from a civil action brought under this chapter or chapter 39 of this  
16 title shall serve the notice and one copy of the appellant's brief on the  
17 attorney general at the time the person files the appellant's brief with the  
18 court. This requirement is jurisdictional.

19 N. In this section and section 13-2312:

20 1. "Acquire" means for a person to do any of the following:

21 (a) Possess.

22 (b) Act so as to exclude other persons from using their property  
23 except on his own terms.

24 (c) Bring about or receive the transfer of any interest in property,  
25 whether to himself or to another person, or to secure performance of a  
26 service.

27 2. "Gain" means any benefit, interest or property of any kind without  
28 reduction for expenses of acquiring or maintaining it or incurred for any  
29 other reason.

30 3. "Proceeds" includes any interest in property of any kind acquired  
31 through or caused by an act or omission, or derived from the act or omission,  
32 directly or indirectly, and any fruits of this interest, in whatever form.

33 Sec. 2. Section 41-1512, Arizona Revised Statutes, is amended to read:

34 41-1512. Military affairs commission; land valuation fund;  
35 violation; classification; definition

36 A. The military affairs commission is established. Through December  
37 31, 2005, the commission membership consists of:

38 1. Thirteen members who are appointed by the governor and who serve at  
39 the pleasure of the governor.

40 2. One member who is appointed by the president of the senate and who  
41 serves at the pleasure of the president of the senate.

42 3. One member who is appointed by the speaker of the house of  
43 representatives and who serves at the pleasure of the speaker of the house of  
44 representatives.

1           B. From and after December 31, 2005, the commission membership  
2 consists of the following members:

3           1. Three members who are appointed by the president of the senate, who  
4 serve at the pleasure of the president of the senate and who include the  
5 following:

6           (a) One member who is knowledgeable in military affairs and who  
7 represents the long-term interests of a military installation.

8           (b) One member who represents private property interests in the  
9 territory in the vicinity as defined in section 28-8461.

10          (c) One member who represents the interests of a city, town or county.

11          2. Three members who are appointed by the speaker of the house of  
12 representatives, who serve at the pleasure of the speaker of the house of  
13 representatives and who include the following:

14          (a) One member who is knowledgeable in military affairs and who  
15 represents the long-term interests of a military installation.

16          (b) One member who represents private property interests in the  
17 territory in the vicinity as defined in section 28-8461.

18          (c) One member who represents the interests of a city, town or county.

19          3. Nine members who are appointed by the governor, who serve at the  
20 pleasure of the governor and who include the following:

21          (a) Three members who are knowledgeable in military affairs and who  
22 represent the long-term interests of a military installation.

23          (b) Three members who represent private property interests in the  
24 territory in the vicinity as defined in section 28-8461.

25          (c) Three members who represent the interests of a city, town or  
26 county.

27          C. The military affairs commission shall have geographic diversity in  
28 its membership.

29          D. The commission shall:

30          1. Meet on a regular basis with the governor, the president of the  
31 senate and the speaker of the house of representatives to provide  
32 recommendations on military issues and report on the progress of the military  
33 affairs commission.

34          2. Develop criteria, including accountability requirements, for  
35 awarding monies from the military installation fund established by section  
36 41-1512.01.

37          3. Review applications for monies to be awarded from the military  
38 installation fund.

39          4. Annually recommend to the department a priority listing of monies  
40 with available resources.

41          5. Recommend to the department how the monies in the military  
42 installation fund should be awarded.

43          6. ADMINISTER THE MONIES IN THE LAND VALUATION FUND ESTABLISHED BY  
44 SUBSECTION E OF THIS SECTION.

1 E. THE LAND VALUATION FUND IS ESTABLISHED CONSISTING OF REVENUES MADE  
2 AVAILABLE TO THE FUND FROM ANY LAWFUL SOURCE. THE MILITARY AFFAIRS  
3 COMMISSION SHALL ADMINISTER THE FUND. ON NOTICE FROM THE MILITARY AFFAIRS  
4 COMMISSION, THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND AS  
5 PROVIDED BY SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE  
6 CREDITED TO THE FUND. THE FUND IS EXEMPT FROM THE PROVISIONS OF SECTION  
7 35-190 RELATING TO LAPSING OF APPROPRIATIONS.

8 F. MONIES IN THE LAND VALUATION FUND ARE CONTINUOUSLY APPROPRIATED FOR  
9 THE PURPOSES OF THIS SECTION.

10 G. THE MILITARY AFFAIRS COMMISSION SHALL ADOPT BY RULE PROCEDURES FOR  
11 RECEIVING AND EVALUATING APPLICATIONS. IF APPLICATIONS FOR MONIES EXCEED THE  
12 AMOUNT AVAILABLE IN THE FUND, THE MILITARY AFFAIRS COMMISSION MAY REQUEST  
13 APPLICANTS TO REDUCE THE AMOUNT OF THE APPLICATIONS OR DENY OR AWARD REDUCED  
14 AMOUNTS.

15 H. THE MILITARY AFFAIRS COMMISSION SHALL RECEIVE AND REVIEW EACH  
16 APPLICATION FOR FUND MONIES AND SHALL DECIDE BOTH OF THE FOLLOWING:

- 17 1. EACH APPLICANT THAT SHOULD BE AWARDED MONIES FROM THE FUND.
- 18 2. THE DOLLAR AMOUNT THAT EACH APPLICANT LISTED PURSUANT TO PARAGRAPH  
19 1 OF THIS SUBSECTION SHOULD BE AWARDED FROM THE FUND.

20 I. AFTER THE MILITARY AFFAIRS COMMISSION MAKES A DECISION PURSUANT TO  
21 SUBSECTION H OF THIS SECTION, THE MILITARY AFFAIRS COMMISSION SHALL AWARD  
22 MONIES TO AN APPLICANT IF ALL OF THE FOLLOWING APPLY:

- 23 1. THE APPLICANT SELLS PROPERTY THAT IS TERRITORY IN THE VICINITY OF A  
24 MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY AS DEFINED IN SECTION  
25 28-8461.
- 26 2. THE INCREASE IN THE FAIR MARKET VALUE OF THE PROPERTY FROM THE TIME  
27 OF THE APPLICANT'S PURCHASE TO THE TIME OF THE APPLICANT'S SALE OF THE  
28 PROPERTY IS LESS THAN THE INCREASE IN THE ASSESSED VALUE OF THE PROPERTY FROM  
29 THE TIME OF THE APPLICANT'S PURCHASE TO THE TIME OF THE APPLICANT'S SALE AS  
30 ASSESSED BY THE COUNTY ASSESSOR IN THE COUNTY IN WHICH THE PROPERTY IS  
31 LOCATED.
- 32 3. THE APPLICANT HAS NOT RECEIVED COMPENSATION PURSUANT TO SECTION  
33 41-1512.01.

34 J. FOR AN APPLICANT TO BE AWARDED MONIES PURSUANT TO SUBSECTION I OF  
35 THIS SECTION:

- 36 1. THE AWARD SHALL NOT EXCEED THE INCREASE IN THE ASSESSED VALUE OF  
37 THE PROPERTY FROM THE TIME OF THE APPLICANT'S PURCHASE TO THE TIME OF THE  
38 APPLICANT'S SALE AS ASSESSED BY THE COUNTY ASSESSOR IN THE COUNTY IN WHICH  
39 THE PROPERTY IS LOCATED.
- 40 2. THE APPLICANT SHALL NOT:  
41 (a) PURCHASE THE PROPERTY AGAIN IN THE FUTURE.  
42 (b) BE A BORROWER ON A LOAN FOR THE BENEFIT OF THE BUYER OF THE  
43 PROPERTY.  
44 (c) SELL THE PROPERTY TO A RELATIVE OF THE APPLICANT.

1           3. A PRIOR OWNER OF THE PROPERTY MUST NOT HAVE BEEN PREVIOUSLY  
2 COMPENSATED BY THE LAND VALUATION FUND AS A RESULT OF A SALE OF THE PROPERTY.

3           K. IF AN APPLICANT IS AWARDED MONIES PURSUANT TO THIS SECTION AND THE  
4 APPLICANT VIOLATES SUBSECTION J, PARAGRAPH 2 OF THIS SECTION, THE APPLICANT  
5 IS GUILTY OF RACKETEERING AS DEFINED IN SECTION 13-2301 AND A CLASS 6 FELONY.

6           L. THE MEMBERS OF THE MILITARY AFFAIRS COMMISSION WHO ARE APPOINTED  
7 PURSUANT TO SUBSECTION B, PARAGRAPHS 1 AND 2 OF THIS SECTION ARE NOT ELIGIBLE  
8 TO VOTE ON THE DISTRIBUTION OF MONIES IN THE LAND VALUATION FUND.

9           ~~E.~~ M. For the purposes of this section, "military installation" means  
10 a military airport or ancillary military facility as defined in section  
11 28-8461 or any real property that services, supports or is used by the  
12 military.

13           Sec. 3. Appropriation; purpose

14           The sum of \$\_\_\_\_\_ is appropriated from the state general  
15 fund in fiscal year 2006-2007 to the land valuation fund established by, and  
16 for the purposes prescribed by, section 41-1512, Arizona Revised Statutes, as  
17 amended by this act.